

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TRUE RELIGION APPAREL, INC.; GURU
DENIM, INC.,

Plaintiffs,

v.

XIAOKANG LEI D/B/A
TRUERELIGIONJEANS4OUTLET.COM;
LIN JIANYU D/B/A
TRUERELIGIONJEANSOUTLET8.COM;
ZHAO YANG QU D/B/A
TRUERELIGION2CHEAP.COM, *et al.*,

Defendants.

CIVIL ACTION NO. _____

**[FILED UNDER SEAL PURSUANT TO
15 U.S.C. § 1116]**

**DECLARATION OF MATTHEW HEWLETT IN SUPPORT OF PLAINTIFFS'
EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER,
ORDER TO DISABLE CERTAIN WEB SITES, ASSET RESTRAINING
ORDER, EXPEDITED DISCOVERY ORDER AND ORDER TO
SHOW CAUSE FOR PRELIMINARY INJUNCTION**

MATTHEW HEWLETT, under penalty of perjury, declares and says:

1. I am a private investigator licensed by the State of North Carolina and employed by Vaudra, Ltd. ("Vaudra"), a North Carolina-based investigation company. I have been employed as a private investigator, focusing on trademark infringement for the past seven years. I have been employed by Vaudra since October 2009. I have conducted and/or participated in approximately four hundred trademark investigations involving counterfeit goods, including those sold on the Internet. I am very familiar with investigations regarding counterfeit jeanswear, among other goods. I am also very familiar with investigations

regarding ‘rogue’ web sites -- that is, sites that appear to be web stores operated by a particular brand, often using the name of the brand in the site’s domain name, which claim to sell authentic goods of that brand but that are in fact selling counterfeit products.

2. I submit this declaration on behalf of Plaintiffs True Religion Apparel, Inc. and Guru Denim, Inc. (collectively, “True Religion”) in support of their *ex parte* Application for a Temporary Restraining Order, Order to Disable Certain Web Sites, Asset Restraining Order, Expedited Discovery Order and Order to Show Cause for Preliminary Injunction against Defendants Xiaokang Lei d/b/a truereligionjeans4outlet.com; Lin Jianyu d/b/a truereligionjeansoutlet8.com; Zhao Yang Qu d/b/a truereligion2cheap.com, *et al.* (collectively, “Defendants”).

3. The following actions were undertaken by myself, or in conjunction with other Vaudra investigators. If called upon as a witness, I could testify to the following from personal knowledge and/or a review of Vaudra’s business files.

4. I am very familiar with the TRUE RELIGION brand including True Religion jeanswear, sportswear, accessories and other products (collectively, the “True Religion Products”) as well as True Religion’s famous trademarks (collectively, the “TRUE RELIGION Marks”) used in conjunction with its True Religion Products.

5. In the course of conducting this investigation for True Religion, I have become familiar with entities that manufacture, source, offer to sell and sell counterfeit products falsely bearing the TRUE RELIGION Marks and designed to look like genuine True Religion Products (“Counterfeit Products”), including those who sell Counterfeit Products via the Internet.

Defendants' Sale of Counterfeit Products Via the Internet

6. In September 2011, at the request of True Religion, Vaudra began to investigate sales of Counterfeit Products on the Internet. Over the course of our investigation, we identified every Defendant named in this action as operating one or more fully interactive web sites and/or selling pages on business-to-business or business-to-consumer web sites offering to sell genuine True Religion Products. But as we discovered through our investigation, each Defendant is actually selling Counterfeit Products.

7. Defendants' web sites and selling pages (collectively the "Infringing Web Sites") are designed to appear to unknowing consumers to be legitimate web stores operated by True Religion and/or authorized to sell genuine True Religion Products. The Infringing Web Sites are sophisticated-looking and written in English and feature professional-looking True Religion images and graphics (taken from True Religion's official web site www.truereligionbrandjeans.com) and detailed product descriptions of True Religion Products. The Infringing Web Sites accept payment in US dollars using PayPal and/or major credit card. Screen shots from representative samples of Defendants' Infringing Web Sites are attached hereto as **Exhibit A**. Through our investigation, we learned that these Infringing Web Sites are being operated by a smaller group of interconnected sellers using multiple false identities based on common, false domain name registration information and common pictures, graphics, layout, setup and language among the Infringing Web Sites.

8. Each Infringing Web Site is designed to appear to unknowing consumers to be located in the US. Each Infringing Web Site is directed to US customers and offers to ship True Religion Products to any US address, including anywhere in New York. Invariably, Defendants' Infringing Web Sites conceal the fact that they are selling Counterfeit Products

shipped directly from China. As discussed in more detail below, Defendants' Infringing Web Sites are devoid of any identifiable names or addresses of Defendants.

9. In order to further deceive customers and so that their sites will appear high on any web browser searches for "True Religion," Defendants have set up many of the Infringing Web Sites at domain names containing the TRUE RELIGION Marks. The following is a list of domain names containing the TRUE RELIGION Marks, owned or controlled by Defendants where the Defendants' Infringing Web Sites are located (collectively, "Infringing Domain Names"):

- | | |
|---------------------------------------|--------------------------------------|
| 1. truereligionjeans4outlet.com | 2. cheapertruereligionjeans.com |
| 3. truereligionjeans2sale.com | 4. truereligionoutlet-sale.com |
| 5. truereligion4outlet.com | 6. truereligionsoutlets2011.net |
| 7. truereligionjeansoutlet8.com | 8. jeans-true-religions.com |
| 9. cheaptruereligionjeanssale.org | 10. truereligionjeansbox.com |
| 11. cheaptruereligionjeans2.com | 12. truereligionjeans-outlets1.info |
| 13. truereligionoutlet3.com | 14. cheaptrue-religionjeans.com |
| 15. truereligionoutlet8.com | 16. cheaptruereligionjeanssale.net |
| 17. truereligionjeanssales.com | 18. true-religion-jeans-outlet.com |
| 19. cheaptruereligion8.com | 20. cheapjeanstruereligion.info |
| 21. toptruereligionjeans.com | 22. cheaptruereligionjeans.info |
| 23. fortruereligionjeans.com | 24. saletruereligionjeans.info |
| 25. truereligionjeansale.co.uk | 26. truereligionjeans-outlet.cc |
| 27. cheaptruereligion.co.uk | 28. truereligionjeans-outlet.info |
| 29. truereligion2cheap.com | 30. truereligionjeans-outlets1.info |
| 31. truereligion-cheap.com | 32. truereligion-outlet.cc |
| 33. truereligion2sale.com | 34. truereligionoutletjeans.info |
| 35. truereligionlike.com | 36. truereligion-outletjeans.info |
| 37. cheapertruereligionjeans.net | 38. truereligionoutletjeans.cc |
| 39. cheaptruereligionjeans2u.com | 40. truereligionjeanssale.cc |
| 41. cheaptruereligionjeans2011.com | 42. truereligionoutlet.cc |
| 43. truereligionoutletusa.com | 44. jeans-true-religion.com |
| 45. cheaptruereligionjeans-sale.com | 46. truereligionoutletjeans-new.info |
| 47. truereligionjeansbox.com | 48. jeans-true-religions.com |
| 49. truereligionjeans4sale.com | 50. truereligionbrandjeansstore.com |
| 51. mycheaptruereligionjeans.com | 52. cheaptruereligionjeanssale.net |
| 53. cheaptruereligionjeansoutlets.com | 54. cheaptrue-religionjeans.com |

55. cheaptruereigionjeansoutlets.net
57. buytruereigionjeans.net
(redirects to qiquwang.net)

56. cheap-true-religion-jeans.com
58. truereigion4sale.com

As shown in **Exhibit B**, described below, there are additional Infringing Web Sites selling Counterfeit Products whose domain names do not include the TRUE RELIGION Marks.

10. As part of our investigation, we contacted each Defendant via one or more of its Infringing Web Sites and thereafter transacted business with each Defendant entirely via the Infringing Web Site and/or email. In each instance, all communication was in English.

11. As part of this investigation, we purchased forty (40) different True Religion Products (each a pair of True Religion jeans), at least one from each named Defendant in this action. Each purchase of a True Religion Product was made in US dollars, paid using PayPal or major credit card and ordered to ship to an address in New York, NY. A chart showing each of these purchases and information about each Defendant and related Infringing Web Sites is attached hereto as **Exhibit B**.

12. To date, we have received thirty four (34) of the True Religion Products from the investigative purchases described above to an address in New York, NY. Each arrived via international courier from China.

13. I have inspected each of the thirty four (34) True Religion Products received to date from the investigative purchases described above and have determined each of them to be a Counterfeit Product.

14. I have been trained by True Religion and am able to identify and distinguish Counterfeit Products from genuine True Religion Products. I am able to tell that the True Religion jeans purchased in course investigative purchases are Counterfeit Products for several reasons, including that: (1) genuine True Religion jeans are manufactured in the United States,

and the all of True Religion jeans we purchased in the course of this investigation were shipped from China, (2) the materials, textures, finishes and overall quality of the True Religion jeans we purchased are different from genuine True Religion jeans, and (3) specific construction and packaging features found on the True Religion jeans we purchased are different from the genuine True Religion jeans.

15. On October 27, 2011, Vaudra mailed four (4) specimens of True Religion jeans purchased in this investigation to True Religion's legal department in Vernon, CA so that Deborah E. Greaves, Esq., True Religion's General Counsel, could examine them for authenticity. I understand that Ms. Greaves has also confirmed that each specimen is a Counterfeit Product. Attached hereto as **Exhibit C** are true and correct copies of photographs of the four (4) specimens of True Religion jeans we sent to True Religion.

16. The Counterfeit Products and their packaging bear similar irregularities and indicia of being counterfeit to one another, leading me to believe the Counterfeit Products were manufactured by and come from common sources and that the Defendants are interrelated.

Defendants' Use of Multiple False Identities

17. Through our investigation, we have determined that Defendants are intentionally concealing their true identities and when they must provide names and addresses, such as in the context of registering a domain name or on the return address of a package, are using a series of false and incomplete names and addresses.

18. All of the purchases received to date described in Paragraphs 11-13 above were shipped from China via China Courier Service Corporation's Express Mail Service ("EMS") (except for one which arrived by China Post). These goods all arrived in similar packages

with similar markings to one another, suggesting that many of them come from common or related sources.

19. US Customs and Border Protection (“CBP”) regulations require that all packages entering the U.S. from another country be accompanied by Declaration Form CN22 or Declaration Form CN23 (for commercial shipments), which must be completed in English. Attached hereto as **Exhibit D** is a true and correct copy of an article from the CBP web site www.cbp.gov regarding the requirements of CBP Declaration Forms CN22 and CN23.

20. The CN22 Declaration, which is incorporated into the EMS waybill, requires the sender to accurately state its name and address in English as well as the contents of the package and to sign a declaration that the package does not contain “dangerous or prohibited goods.” This EMS waybill also contains the following instruction in English and Chinese: “FOR PARCEL, PLEASE FILL IN THE DECLARATION FORM CN23, PROVIDE COMMERCIAL INVOICE OR PRO FORMA INVOICE AND CAREFULLY COMPLETE THE FORM BELOW IN ENGLISH.”

21. In every one of the thirty four (34) parcels containing Counterfeit Products received to date, the Defendants’ CBP declaration requirements appear to be incomplete in the following ways: a) the CBP Declaration Form 22 does not contain a discernable or accurate return name and address of the sender, b) the CBP Declaration Form CN22 either does not identify the true contents of the package (*i.e.*, description of contents is blank), or instead claim the package contains something else such as “personal items,” “shoes of cloth,” “gift,” or “family gift,” c) the parcel was not accompanied by the required CBP Declaration Form CN23, and d) the parcel was not accompanied by the required commercial invoice. Additionally, on the vast majority of Defendants’ CBP Declaration Forms CN22, all of the return address

information is in Chinese using Chinese characters rather than the required English, and most do not contain a signature declaring the package did not contain “dangerous or prohibited goods.”

22. In my experience, offering false and incomplete information on waybills and required CBP declarations is a technique commonly used by counterfeiters to prevent the counterfeit merchandise from being traced back to them in order to avoid detection and liability by CBP and/or by brand owners. True and correct copies of the shipping labels accompanying each of the Counterfeit Products received to date is attached hereto as **Exhibit E**. (Please note that the New York names and addresses where the Counterfeit Products were sent have been redacted out to preserve my investigative firm’s undercover names and addresses.)

23. Defendants also conceal their true identities by providing false or incomplete information in the domain names they register for the Infringing Web Sites. The Internet Corporation for Assigned Names and Numbers (ICANN), the body that governs domain names, has adopted the Uniform Name Dispute Resolution Policy (the “ICANN Policy”) which requires each registrant of a domain name to provide complete and accurate information to identify the registrant. Attached hereto as **Exhibit F** is a true and correct copy of the ICANN Policy. This registration information is compiled in a network of publicly-available databases commonly referred to as ‘WhoIs.’ In all of the Defendants’ domain name registrations, as visible on the WhoIs database, Defendants’ listed names and addresses are incomplete, nonsense, randomly-typed letters, or street addresses with no cities or states listed. Recently, we have noticed that counterfeiters are starting to use a new type of false address in domain name registrations so that the domain appears to be registered to individual at a US

address, but in fact is operated from China with no relationship to the registrant listed. We have examined the domain name registrants for the domains www.fortruereligionjeans.com and cheapertruereligionjeans.net and found them both to be operating from China with no apparent relationship the US-based addresses in the domain name registration.

24. In addition, the senders' names and return addresses listed on the waybill/CBP Declarations of each of the thirty four (34) packages we received were uniformly different from the names and addresses that Defendants used in connection with the domain name registrations for the Infringing Web Sites. See **Exhibit B**.

25. The following is an example of how a particular Defendant conceals its true identity: The Infringing Web Site located at truereligionjeans4outlet.com appears to consumers to be a genuine True Religion web stores, selling authentic True Religion Products. Through this investigation, however, we have determined that truereligionjeans4outlet.com sells Counterfeit Products. The truereligionjeans4outlet.com web site conceals any identifiable information about the entity operating the site such as a name, address or telephone number -- indeed, the site claims to be an online "True Religion" store. The only way to contact the operator of this web site is through a messaging function on the web site itself. The domain name registration information on the WhoIs database shows that the registrant for truereligionjeans4outlet.com is:

Xiaokang Lei
bei jing hai dian qu yu yuan tan nan lu pu hui bei li 40 hao
Beijing, China 100035
Tel : 86-010-55896647
Fax : 86-010-55896647
Email: ca10010cn@hotmail.com

26. We have investigated this information and have determined it to be false. Upon purchase, we received an email from service@psunions.com providing a tracking number for

the purchase. Some time later, a package matching up to this tracking number arrived containing what we have identified as being counterfeit True Religion jeans. The return address on the waybill was not in English and does not appear to contain a complete and discernable address.

27. It is apparent that Defendants' *modus operandi* is to conceal their true identities and to use multiple false identities in each different facet of their business in order to avoid detection, as shown by a simple review of **Exhibit B**, comparing the following inconsistent information: (1) the Defendants' concealment of their identities on the Defendants' Infringing Web Sites, as shown in the first column; (2) the return addresses on the packages of Counterfeit True Religion Products we received, as shown in the second column; (3) the email contact information, as shown in the third column; and (4) the domain name registration information, as shown in the sixth column.

28. We are currently unaware of the true identities and locations of the Defendants, any other Infringing Web Sites of Defendants, and the location of the Counterfeit Products that are being readied for distribution.

29. In my experience, persons/entities who source, offer for sale and/or sell counterfeit goods use every means possible to conceal their identities in an effort to avoid detection. My experience has also shown that defendants in these types of cases will circumvent orders restraining assets that are issued with prior notice, and claim ignorance of their responsibilities while simultaneously draining their financial accounts. I have no doubt that if Defendants were given notice of an action against them they would immediately take steps to change their operation and identities and to hide all assets, which is very easy to do when operating a business solely over the Internet.

Communication By Email

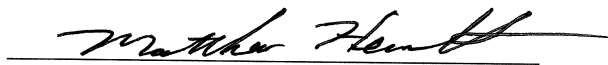
30. Because Defendants have falsified and concealed their identities on the Infringing Web Sites, the return addresses on the packages of the Counterfeit Products, their domain name information for domain names in WhoIs databases, and their PayPal accounts, we have been unable to determine Defendants' true identities and locations, and I believe it would virtually be impossible to do so.

31. This investigation has revealed that Defendants do business with customers solely over the Internet via the Infringing Web Sites and/or by email in order to hide their true identities and locations.

32. We have communicated with and/or received emails from Defendants, at forty seven (47) different email addresses, which I believe are correct and regularly monitored. A list of these email addresses is included in the chart **Exhibit B**.

33. This investigation has revealed that Defendants are using sixty-three (63) email accounts to coordinate the sale of or accept payment for Counterfeit Products. Given that these are the email accounts through which the undercover buys were made and payments were sent to Defendants, these email accounts are very likely to be currently functioning, capable of receiving messages, and regularly checked for incoming email. In addition, we have identified twenty-seven (27) other email addresses appearing on the domain name registrations for the Infringing Web Sites in the WhoIs database. These additional emails addresses might also be active email accounts used by Defendants, although in my experience it is common for Internet counterfeiters to use old or inactive email addresses in this context. Annexed hereto as **Exhibit G** is a list of all one hundred and thirty seven (137) email addresses associated with Defendants.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Charlotte,
North Carolina on November 10, 2011.

A handwritten signature in black ink, appearing to read "Matthew Hewlett", is written over a horizontal line.

MATTHEW HEWLETT